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In re Application of :
SONNEWALD, Uwe *et al* :
U.S. Application No.: 10/516,075 :
PCT No.: PCT/EP03/07027 :
Int. Filing Date: 02 July 2003 :
Priority Date: 04 July 2002 :
Attorney Docket No.: 53262-20097.00 :
For: METHODS FOR OBTAINING :
PATHOGEN RESISTANCE IN PLANTS :

DECISION

This is a decision on applicants' "Request for Withdrawal of Holding of Abandonment or in the alternative, Petition to Revive" filed on 17 February 2006.

BACKGROUND

On 29 November 2004, applicants filed papers to enter the national stage of PCT/EP03/07027 accompanied by a declaration naming Morrison & Foerster LLP as attorney of record.

On 25 February 2005, a "Request for Withdrawal as Attorney or Agent" was filed by Morrison & Foerster LLP requesting transfer to an attorney at Powell Goldstein LLP at the request of the assignee, SunGene GmbH & Co. KGaA.

On 06 May 2005, the United States Designated/Elected Office (DO/EO/US) mailed to Morrison & Foerster LLP a Notification to Comply With Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/922) indicating that a computer readable form sequence listing must be provided. A two-month time period for response was set with extensions of time available under 37 CFR 1.136(a).

On 19 May 2005, a Power of Attorney with change of correspondence address and a Statement Under 37 CFR 3.73(b) along with a copy of an assignment was filed by the assignee appointing Connolly Bove Lodge & Hutz LLP as attorney of record.

On 26 January 2006, a "Status Inquiry" was filed by Connolly Bove Lodge & Hutz LLP.

On 17 February 2006, applicants filed the subject petition requesting to withdraw the holding of abandonment, or in the alternative, a petition to revive.

On 28 March 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) due to a lack of response to the Form PCT/DO/EO/922 filed 06 May 2005. A "Notice Regarding Change of Power of Attorney" was also mailed to Morrison & Foerster LLP informing them that their power of attorney was revoked by applicant on 19 May 2005.

DISCUSSION

Applicants request that the status of the above-captioned application be reinstated, or in the alternative that the application be revived.

Withdraw the Holding of Abandonment

Applicants claim that the Form PCT/DO/EO/922 mailed 06 May 2005 was never seen prior to receiving a copy from the PCT Help Desk on 16 February 2005. Applicants assert that the error was caused by the Office mailing the Form PCT/DO/EO/922 to the wrong address. Applicants state that:

Morrison & Foerster filed a Request for Withdrawal as Attorney or Agent on February 25, 2005, stating that the application was being transferred to another attorney, listing James Remenick at Powell Goldstein LLP as the new attorney of record. Over two months after the Request for Withdrawal, the Notification was sent to Morrison & Foerster instead of James Remenick (i.e. to the wrong address).

Furthermore, Applicants filed . . . a new Power of Attorney for the application on May 16, 2005

A review of the subject application verifies that a "Request for Withdrawal as Attorney or Agent" was filed in the above-captioned application on 25 February 2005 by the former counsel, Morrison & Foerster LLP. Nonetheless, section 402.06 of the MPEP discusses withdrawal of an attorney and states, in part:

In the event that a notice of withdrawal is filed by the attorney or agent of record, the file will be forwarded to the Technology Center Director where the application is assigned where appropriate procedure will be followed pertaining to the withdrawal. **The withdrawal is effective when approved rather than when received.**

In this case, the request to withdraw as attorney submitted by Morrison &

Foerster LLP on 25 February 2005 was not approved until 28 March 2006.

Accordingly, the address of the original attorney of record at Morrison & Foerster LLP was still effective when the Form PCT/DO/EO/922 was mailed. No mistake was made by the Office. The Form PCT/DO/EO/922 should have been forwarded to the new attorney along with the rest of the file by Morrison & Foerster LLP.

Applicants' request to withdraw the holding of abandonment is declined.

Petition to Revive Under 37 CFR 1.137(b)

Applicants request in the alternative to revive the above-captioned application. A petition to revive pursuant to 37 CFR 1.137(b) requires: (1) a proper reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

The proper reply is to provide a copy of the "Sequence Listing" in computer readable form. Applicants provided a computer readable version of the sequence listing that has been processed as good technically and entered into the database by the Scientific and Technical Information Center. The appropriate petition fee of \$1,500.00 has been charged to Deposit Account No. 03-2775 as authorized. Applicants state that "the application was unintentionally permitted to become abandoned." This is interpreted as meaning that the "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3). If this is an incorrect interpretation, applicants are requested to notify this office. A terminal disclaimer is not required.

Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

CONCLUSION

For the reason discussed above, applicants' petition to withdraw the holding of abandonment is **DISMISSED**.

Applicants' petition to revive under 37 CFR 1.137(b) is **GRANTED**.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 02 July 2003, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 29 November 2004.

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This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

A handwritten signature in black ink, appearing to read "James Thomson". The signature is fluid and cursive, with the first name "James" and last name "Thomson" clearly distinguishable.

James Thomson
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